STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

SOUTH SAN FRANCISCO UNIFIED SCHOOL DISTRICT,	)	
Charging Party,	)	Case No. SF-CO-381
v.	)	PERB Decision No. 830
SOUTH SAN FRANCISCO CLASSROOM TEACHERS ASSOCIATION, CTA/NEA,	)	July 26, 1990
Respondent.	)	

Appearances: Teresa R. Tracy and Cynthia M. Walker, Attorneys, for South San Francisco Unified School District; A. Eugene Huguenin, Jr., Attorney, for South San Francisco Classroom Teachers Association, CTA/NEA.

Before Shank, Camilli and Cunningham, Members.

DECISION

SHANK, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the South San Francisco Unified School District (District) of a Board agent's dismissal of its charge filed against the South San Francisco Classroom Teachers Association, CTA/NEA (Association).

In its charge, the District alleged that the Association violated the public notice provisions of the Educational Employment Relations Act (EERA)[1] when it proposed, during

[1]EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Specifically, the District alleged the Association violated EERA section 3547(d) which provides:

> New subjects of meeting and negotiating arising after the presentation of initial

mediation, that the contract settlement for the 1989-90 school year include salary provisions for the 1990-91 school year. The gravamen of the District's charge was that the Association had not included the salary proposal for the 1990-91 school year in its original sunshine package and had made no public presentation of its proposal to expand the scope of negotiations to include salary provisions for 1990-91 prior to making that proposal during mediation. After giving the District an opportunity to amend its charge, and having received no amended charge from the District, the Board agent dismissed the charge for failure to state a prima facie case.

We have reviewed the entire record in this case, including the District's appeal[2] and the Association's opposition thereto and, for the reasons set forth below, affirm the decision of the Board agent dismissing the charge.

DISCUSSION

As noted above, the gravamen of the District's charge is that the Association violated the public notice requirements when, during a mediation session, it presented a salary proposal

> proposals shall be made public within 24 hours. If a vote is taken on such subject by the public school employer, the vote thereon by each member voting shall also be made public within 24 hours.

[2]The District also filed a reply to the Association's opposition on June 12, 1990. As PERB regulations do not provide for the filing of a reply to a statement in opposition to an appeal of dismissal, we do not consider the reply in the disposition of this appeal. (See PERB Regulation 32635. PERB Regulations are codified at California Administrative Code, title 8, section 31001 et seq.)

that had not been previously sunshined. It is well established that public notice complaints shall not be adjudicated in the context of unfair practice proceedings, but must be filed in accordance with regulations governing public notice complaints. (PERB Regulations 32900-32960; Los Angeles Community College District (1983) PERB Decision No. 309, pp. 4-5; Los Angeles Community College District (1981) PERB Decision No. 167.) Thus, even assuming arguendo that the Association's conduct violated EERA section 3547(d),[3] this Board has no authority in an unfair practice proceeding to render a decision concerning a possible public notice violation.

While this Board may be without authority to find a violation of EERA section 3547(d) in an unfair practice proceeding, the Board has found compliance with public notice requirements to be a factor which may be considered in evaluating whether a party has been acting in good faith during the negotiations process. (See Oakland Unified School District (1983) PERB Decision No. 326, p. 40.) In a proper case, a party's failure to comply with public notice requirements might also be a consideration in determining whether that party is participating in good faith in the impasse procedures. In this

[3]The Association contends, in its response to the District's appeal, that EERA section 3547(d) imposes a duty upon the public school employer, but not upon the exclusive representative. The statutory language is unclear as to whether the exclusive representative is a proper party respondent in a 3547(d) complaint, the Board itself has not specifically decided the issue, and we need not address the issue here as we find the charge defective on other grounds.

case, however, the District did not, in its charge, specifically allege that the Association failed to participate in good faith in the impasse procedures. Neither did the District set forth any other factual allegations that, considered together with the failure to sunshine allegation, would support a finding that the Association failed to participate in good faith in the impasse procedures in violation of EERA section 3543.6(d).[4] Significantly, the Board agent alerted the District to this deficiency but the District, when given the opportunity to do so, did not amend its charge.

In its appeal, the District argues for the first time that the alleged conduct by the Association constitutes a per se violation of EERA section 3543.6(d). The District now contends that by proposing, during mediation, that the parties agree to salaries for 1990-91, without first sunshining that proposal, the Association was asking the District to negotiate a proposal it could not lawfully negotiate. The District contends that, by this conduct, the Association insisted to impasse on a non-mandatory subject of bargaining and committed a per se violation

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[4]section 3543.6(d) states:

> It shall be unlawful for an employee organization to:
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> . . . . . .
>
> (d) Refuse to participate in good faith in the impasse procedure set forth in Article 9 (commencing with Section 3548).

of the duty to participate in good faith in the impasse procedures.[5]

PERB Regulation 32635 sets forth the procedures for Board review of a dismissal of an unfair practice charge by a Board agent. Subdivision (b) provides:

> Unless good cause is shown, a charging party may not present on appeal new charge allegations or new supporting evidence.

The purpose of PERB Regulation 32635(b) is to require the charging party to present its allegations and supporting evidence to the Board agent in the first instance, so that the Board agent can fully investigate the charge prior to deciding whether to issue a complaint or dismiss the case. In the instant case, the District is attempting, through its appeal, to amend its unfair practice charge to allege, for the first time, a per se violation of EERA section 3543.6(d). The District has offered no good cause for its failure to present this new legal allegation, together with supporting factual allegations, in its original charge or in an amended charge.[6] Thus, we find that the

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[5]The District cites Lake Elsinore School District (1986) PERB Decision No. 603 and Modesto City Schools (1983) PERB Decision No. 291 and argues that the principles set forth therein apply by analogy to the instant case.

The Board has not yet determined whether the failure to sunshine a proposal constitutes a "per se" violation of the duty to participate in good faith in the impasse procedures. As we dismiss this case on procedural grounds, we need not decide this issue here.

[6]Since we find that the District's allegations of a violation of EERA section 3543.6(d) were not properly raised before the Board agent, we do not decide whether, if properly raised, they would state a prima facie case.

District's appeal does not have merit and that the Board agent acted properly in dismissing the unfair practice charge.

ORDER

Based upon the entire record in this case, and consistent with the discussion above, it is hereby ORDERED that the unfair practice charge in Case No. SF-CO-381 is DISMISSED WITH PREJUDICE.

Members Camilli and Cunningham joined in this Decision.